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8 ATTORNEYS FOR Debtor

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10

11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13

14 In re: ) Case No. 13-53491  
15 272 E SANTA CLARA GROCERY, LLC, ) CHAPTER 11  
16 ) Debtor. ) **DECLARATION OF THOMAS  
17 ) RANCATORE**  
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I, Thomas Rancatore, do hereby declare:

1. I am, and at all times herein referenced herein was, over the age of eighteen.
2. I submit this declaration relative to 272 E. Santa Clara Grocery, LLC's ("Debtor") objection to the Proof of Claim filed by Boston Private Bank & Trust Company ("BPB") who I understand is the successor to Borel Bank.
3. I submit this declaration of my own personal knowledge based on my personal involvement in a loan to Kimomex Santa Clara, LLC ("Kimomex") by various investors of IGL and brokered and serviced by IGL, foreclosure of the associated deed of trust with Kimomex relative to real property commonly known as 272 E. Santa Clara Street, San Jose, California ("the Property"), IGL's and Debtor's transactions and dealings with BPB relative

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DECLARATION OF THOMAS RANCATORE

1 to BPB's loan and deed of trust to Kimomex relative to the Property, BPB's notice of default  
2 and notice of trustee's sale relative to BPB's loan and deed of trust to Kimomex relative to  
3 the Property, payments to BPB relative to BPB's loan to Kimomex, the foreclosure by IGL of  
4 the deed of trust associated with the Property, creation of Debtor, transfer of interests in the  
5 Property from IGL's investors to Debtor, Debtor's efforts to secure a tenant for the Property,  
6 Debtor's efforts to sell The Property, the bankruptcy of Debtor, the sale of the Property, and  
7 Debtor's tax returns. In this regard, I was and am readily familiar with process by which IGL  
8 and Debtor maintained its files, books, and records, with IGL's and Debtor's files, books,  
9 and records and IGL's files, books and records as they relate to each of the above-listed  
10 areas, know the documents attached hereto were placed into the files, books, and records of  
11 IGL and Debtor at or near the time they were received or generated, and became part of the  
12 files, books, and records IGL and Debtor consistent with the regularly business activities of  
13 IGL and Debtor.

14 4. Only true and correct copies of the referenced exhibits are attached hereto. Except as  
15 noted herein the referenced exhibits are from IGL's and Debtor's files, books, and records. I  
16 understand the attached exhibits are also listed exhibits in Debtor's Trial Exhibit List and  
17 therefore this declaration references and uses those exhibit letters/numbers.

18 5. I hold a Bachelor's degree. I have been licensed as a Certified Public Accountant  
19 ("CPA") since 1982. Prior to employment at Investment Grade Loans, Inc. ("IGL" or  
20 "IGLI") I worked approximately four years as a government auditor, approximately four  
21 years for a start-up, and approximately fourteen years for a real estate syndicator.

22 6. I worked for IGL from approximately March 2000 through November 2013 at which  
23 time I retired. My title at IGL was Chief Financial Officer. My general duties at IGL  
24 included, but were not limited to, anything related to accounting, preparing operating  
25 agreements for new business deals, preparing loan documents including promissory notes,  
26 deeds of trust, and related documents, preparing lender documents for IGL's investors,  
27 including disclosures, loan servicing, and preparation of tax returns for IGL and entities used  
28 for various business deals. I also communicated with IGL's borrowers and IGL's investors.

1 My duties at IGL included various similar actions on behalf of the Debtor and included  
2 assisting Debtor and Debtor's manager Andrew Lewis with various bankruptcy filings and  
3 other matters. During my employment at IGL and relative to work for the Debtor, I generally  
4 reported to, took direction from, and assisted Andrew Lewis who, at all times relevant, was  
5 the president of IGL and manager of Debtor. As a result of my years of employment and  
6 duties at IGL and on behalf of Debtor I became familiar with and am familiar with the  
7 signature of Andrew Lewis.

8 7. In May 2009, several investors (collectively the "Investors") loaned \$635,000 to  
9 Kimomex Santa Clara, LLC ("Kimomex") ("IGL Note") secured by a deed of trust in second  
10 position ("Second DOT") against the Property and with IGL as trustee. The Second DOT  
11 was subject to an existing first deed of trust in the amount of approximately \$3.6 million  
12 dollars recorded in July 2008 in favor of BPB formerly known as Borel Private Bank & Trust  
13 Company ("First DOT") and related to a loan by BPB to Kimomex ("BPB Loan"). In this  
14 regard I prepared the loan documents for IGL's loan to Kimomex, including the IGL Note  
15 and Second DOT based on the information provided to and made available to IGL.

16 8. In approximately May 2009 and prior to execution of the IGL Note and Second  
17 Deed of Trust I prepared an Investment Overview for IGL's analysis and for the Investor's  
18 benefit based on information provided to and made available to IGL. The Investment  
19 Overview is signed by Andrew Lewis on behalf of IGL. The Investment Overview notes  
20 certain information which IGL and the Investors may consider before proceeding with the  
21 business opportunity, including our understanding of the prior encumbrance. The Investment  
22 Overview notes, under "Prior Encumbrances" that Kimomex's monthly payment to BPB  
23 under BPB's loan to Kimomex and First DOT was \$24,307.00, the interest rate was 6.5%,  
24 the present balance was \$3,555,168.55. The "Equity Analysis", Disclosure Statement  
25 Summary, Part 9 Encumbrance Information, and Part 10 Loan to Value Ratio sections of the  
26 Investment Overview also note the present balanced owed by Kimomex to BPB was  
27 \$3,555,168.55). See Debtor's Trial Exhibit A.  
28

1       9. In approximately June 2011 IGL recorded a notice of default under the Second DOT  
2 because Kimomex defaulted on the IGL Note.

3       10. In approximately June 2011, IGL received a copy of a Notice of Trustee's  
4 Sale whereby BPB, through its trustee PLM Lender Services, Inc. (PLM Lender") gave  
5 notice of its intent to foreclose on the First DOT. The Notice of Trustee's Sale is dated June  
6 23, 2011 and provides that the unpaid balance and other charges was estimated at  
7 \$3,868,163.06. See Debtor's Trial Exhibit C.

8       11. On June 30, 2011, prior to the Foreclosure Agreement described below, IGL was  
9 provided a reinstatement letter dated June 29, 2011 by PLM Lender Services, Inc. ("PLM"),  
10 trustee of the First DOT, which indicated, in part, the amounts necessary to reinstate the loan  
11 through July 15, 2011 at \$386,080.68 (delinquent payments of \$340,304.30 and  
12 miscellaneous fees) and specified a principal balance of \$3,487,501.16. See Debtor's Trial  
13 Exhibit D.

14       12. On July 15, 2011, prior to the sale date, BPB and IGL entered into an "Agreement Re  
15 Foreclosure Sale" (the "Foreclosure Agreement"). Mr. Lewis negotiated the reinstatement  
16 and cure amount of \$380,661.90 directly with Bruce Brown of BPB. My involvement with  
17 the Foreclosure Agreement was to exchange signature pages with BPB and have \$380,661.90  
18 paid to BPB as directed by Andrew Lewis. Upon receipt of Mr. Lewis' signature page on the  
19 Foreclosure Agreement, I forwarded a copy to Bruce Brown of BPB and on July 18, 2011  
20 wired \$380,661.90 to BPB as directed by Andrew Lewis. See Debtor's Trial Exhibits G and  
21 H.  
22  
23

1       13. The foreclosure sale on the Second DOT took place on October 24, 2011. At the sale  
2 the Investors bid \$100,000, which was the highest bid, and became the owners of the  
3 Property. The sale resulted in a deficiency balance due on the IGL Loan of \$1,083,908.74.  
4 On October 27, 2011 I prepared and signed on behalf of IGL as trustee a Trustee's Deed  
5 noting the debt balance, bid amount, and other information and wherein the Investors granted  
6 their interest in the Property to Debtor. Andy Lewis also signed the Trustee's Deed. The  
7 Trustee's Deed was recorded with the Santa Clara County Recorder on April 20, 2012 as  
8 Document#21633290). See Debtor's Trial Exhibit J.

9       14. At the time of the foreclosure of the Second DOT, it was my understanding that the  
10 building on the Property was empty, there was no tenant, and there was no rental income.  
11

12       15. In January 2012 BPB, IGL, and Debtor entered into a Second Amendment to  
13 Agreement. My involvement with the Second Amendment to Agreement was to exchange  
14 signature pages with BPB and have \$48,614.90 (for the December 2011 and January 2012  
15 payments) sent to BPB so they were considered timely. Upon receipt of Mr. Lewis' signature  
16 page on the Second Amendment to Agreement, I forwarded a copy to Bruce Brown of BPB,  
17 wired \$48,614.90 to BPB, and received confirmation of same from Bruce Brown of BPB.  
18 See Debtor's Trial Exhibit L.

19       16. Between October 2011 and March 2012, the Investors and the Debtor marketed  
20 the Property for lease to potential tenants, found a tenant in March 2012, entered into a lease  
21 on March 8, 2012, and eventually paid \$242,000 in leasing commissions as part of securing  
22 the tenant at the Property.  
23

24       17. Between October 2011 and March 2012 was paying BPB its regularly monthly  
25 payment of \$24,307.45 per month to keep the loan current.  
26  
27  
28

1       18. In March 2012, the Investors formed 272 E Santa Clara Grocery, LLC ("Debtor") and  
2 by way of a Grant Deed deeded their respective ownership interests in the Property to the  
3 Debtor. The Grant Deed was recorded in April 2012. I prepared the operating agreement and  
4 Grant Deed and secured signatures from the Investors and Andrew Lewis as declarant for the  
5 Grant Deed. See Debtor's Trial Exhibit O.

6       19. On June 25, 2012, on behalf of IGL and Debtor, I sent the Investors correspondence  
7 updating them on matters relating to the IGL Loan, Second DOT, BPB, and the Property and  
8 to make a cash call for additional monies to fund related expenditures. See Debtor's Trial  
9 Exhibit Q. The correspondence indicates, in relevant part, that BPB is owed approximately  
10 \$3,400,000.00—a figure based on Debtor's files, books, and records regarding the amounts  
11 paid to BPB on the BPB Loan, including the amount of interest paid to BPB on the BPB  
12 during 2012 and the outstanding principal balance of the BPB Loan. I believe one of the  
13 Investors (Ogen Perry) responded by loaning Debtor monies.  
14

15      20. Debtor continued to pay BPB \$24,307.45 per month through and including March 2013.  
16 Thus, from July 2011 through March 2013, Debtor paid Plaintiff \$380,661.90 to cure the  
17 arrearage and bring the loan current, plus approximately \$413,219 in monthly payments for a  
18 total of \$793,880.90 to keep the loan current. This is in addition to the approximate \$242,000  
19 for leasing commissions spent to find a tenant. Thus, a total of approximately \$1,035,880 was  
20 spent relative to this matter.

21      21. In late January or early February 2013 Debtor needed payment information for  
22 payments made to BPB on the BPB Loan so Debtor could prepare its 2012 tax return and  
23 include interest payment information for payments made on the BPB Loan. Debtor had not  
24 received a 1098 or similar form from BPB with this information so Debtor requested a  
25 payment history from BPB.  
26

27      22. On or about February 4, 2013 Debtor received a facsimile from BPB, addressed to me,  
28 consisting of a payment history on the BPB Loan. This fax was received and reviewed by me

1 at or about the time it was received and was dated and immediately placed in Debtor's files,  
2 books, and records in the normal course of business. The payment history reflected a  
3 payment history for 12/27/11 through 12/31/12, a principal balance of \$3,460,916.67, regular  
4 monthly payments of \$24,307.45, but an allocation of the payments only to interest and at  
5 8.5% interest. A true and correct copy of this fax is attached hereto as Debtor's Trial Exhibit  
6 T. This fax was preceded by an email addressed to me from BPB and indicating "Bruce is out  
7 of the office today and per your voice mail has asked me to forward a payment history to you.  
8 I will prepare and sent to you later today by fax". See Debtor's Trial Exhibit BBB.

9 23. The 8.5% interest rate and the allocation of the entire regular monthly payments of  
10 \$24,307.45 to interest listed in the payment history on the BPB Loan did not appear correct.  
11 Therefore, I brought the matter to the attention of Andrew Lewis.

12 24. Thereafter, on or about February 25, 2013 Bruce Brown emailed a revised payment  
13 history to me which referenced the BPB Loan, the payment history from July 19, 2011  
14 through February 15, 2013, the interest rate at 6.5%, the regular monthly payment of  
15 \$24,307.45, the application of the regular monthly payment to principal and interest at 6.5%,  
16 a declining principal balance, and a principal balance of \$3,347,194.03. A true and correct  
17 copy of this fax is attached hereto as Debtor's Trial Exhibit U. The information contained in  
18 this revised payment history was consistent with Debtor's files, books, and records regarding  
19 the amounts paid to BPB on the BPB Loan, including the amount of interest paid to BPB on  
20 the BPB during 2012 and the outstanding principal balance of the BPB Loan. The email and  
21 revised payment history were received and reviewed by IGL, Debtor, and me at or about the  
22 time it was received and was dated and immediately placed in Debtor's files, books, and  
23 records in the normal course of business.

24 25. Thereafter, I prepared and signed as the preparer Debtor's 2012 U.S. Return of  
25 Partnership Income dated February 28, 2013 and therein relied, in part, on the files, books,  
26 and records of IGL and Debtor and on the revised payment history from BPB to complete the  
27 tax return, specifically, Line 9 of Form 8825 entitled Rental Real Estate Income and

1 Expenses of Partnership or an S Corporation ("Form 8825") which asks for interest paid  
2 during the tax year. The tax return includes Schedule K-1 (Form 1065) which were sent to  
3 the Investors for their personal tax purposes, the Schedule K-1 includes profit and loss  
4 information from the tax return, and profit and loss was determined, in part, based on the  
5 amount of interest paid to BPB during the tax year.

6 26. Debtor did not make the March 2013 regular monthly payment to BPB pursuant to an  
7 agreement between Debtor and BPB as negotiated by Andrew Lewis and Bruce Brown of  
8 BPB. Debtor did not make regular monthly payments to BPB after May 2013 pursuant to an  
9 agreement between Debtor and BPB as negotiated by Andrew Lewis and Bruce Brown of  
10 BPB and BPB's subsequent demand that the tenant on the Property pay rent directly to BPB.  
11

12 27. On June 27, 2013, Debtor commenced this Chapter 11 bankruptcy case ("Bankruptcy  
13 Case").  
14

15 28. I assisted Debtor prepare its various bankruptcy schedules pursuant to on my duties and  
16 responsibilities with IGL and for Debtor and based on the files, books, and records of IGL  
17 and Debtor although the final approval of these schedules was Andrew Lewis' responsibility.  
18 Based on this information Debtor' Schedule D (Debtor's Trial Exhibit CC) listed the  
19 outstanding balance owed to BPB pursuant to the First DOT at \$3,360,000.00, Debtor's July  
20 2013 Monthly Operating Report (Debtor's Trial Exhibit DD) listed the outstanding balance  
21 owed to BPB pursuant to the First DOT at \$3,360,000.00 (this total excludes the estimated  
22 secured property taxes owing of \$210,000.00), and Debtor's Amended Schedule D (Debtor's  
23 Trial Exhibit EE) listed the outstanding balance owed to BPB pursuant to the First DOT at  
24 \$3,360,000.00. True and correct copies of Debtor's Trial Exhibits CC, DD, and EE are  
25 attached hereto and said documents were prepared by me from information contained within  
26 IGL's and Debtor's files, books, and records.  
27

28 29. In July 2013 Debtor and I, based on IGL's and Debtor's files, books, and records,  
prepared and provided the United States Trustee with a Balance Sheet as of June 27, 2013  
which listed the outstanding balance owed to BPB pursuant to the First DOT at

1 \$3,359,448.01. A true and correct copy of Debtor's Balance Sheet as of June 27, 2013 is  
2 attached hereto as Debtor's Trial Exhibit FF.

3 30. In July 2013 Debtor and I, based on Debtor's files, books, and records, prepared and  
4 provided the United States Trustee with a Profit & Loss statement for January 1, 2013  
5 through June 27, 2013 which listed the interest paid or payable to BPB on the BPB Loan at  
6 \$72,922.35 for the five months of 2013. The interest figure was based on Debtor's files,  
7 books, and records, including the revised payment history, regular monthly payments of  
8 \$24,307.45, a 6.5% rate, and the information BPB provided to IGL and Debtor. A true and  
9 correct copy of Debtor's Profit & Loss statement is attached hereto as Debtor's Trial Exhibit  
10 GG.

11 31. In February 2013 Debtor and I, based on Debtor's files, books, and records, prepared a  
12 Balance Sheet as of December 31, 2012. The Balance Sheet and listed the outstanding  
13 balance owed to BPB pursuant to the First DOT at \$3,359,448.01 and was based on Debtor's  
14 files, books, and records, including the revised payment history, regular monthly payments of  
15 \$24,307.45, a 6.5% rate, and the information BPB provided to IGL and Debtor. A true and  
16 correct copy of the Debtor's Balance Sheet as of December 31, 2012 is attached hereto as  
17 Debtor's Trial Exhibit XX.

18 32. In February 2013 Debtor and I, based on Debtor's files, books, and records, prepared a  
19 Profit & Loss statement for 2012. A true and correct copy of the Debtor's Profit & Loss  
20 statement for 2012 is attached hereto as Debtor's Trial Exhibit YY. The statement listed the  
21 amount of interest paid to BPB on the BPB Loan at \$214,528.19 and was based on Debtor's  
22 files, books, and records, including the revised payment history, regular monthly payments of  
23 \$24,307.45, a 6.5% rate, and the information BPB provided IGL and Debtor.

24 33. Neither IGL's nor Debtor's files, books, or records include a notice of acceleration of  
25 the BPB Loan.

26 I declare under penalty of perjury that the foregoing is true and correct and that this  
27 declaration was executed at Los Altos, California, on May 6, 2014.

28 /s/ Thomas Rancatore  
Thomas Rancatore

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DECLARATION OF THOMAS RANCATORE